

97TH CONGRESS }
2d Session }

HOUSE OF REPRESENTATIVES

REPORT
No. 97-580

INTELLIGENCE IDENTITIES PROTECTION ACT

MAY 20, 1982.—Ordered to be printed

Mr. BOLAND, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany H.R. 4]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 4) to amend the National Security Act of 1947 to prohibit the unauthorized disclosure of information identifying certain United States intelligence officers, agents, informants, and sources, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendments numbered 6, 7, 10 and 12.

That the House recede from its disagreement to the amendments of the Senate numbered 1, 2, 3, 4, 8, 9, 11, 13, 14, 15, 16, 17, 18 and 19, and agree to the same.

Amendment numbered 5:

That the House recede from its disagreement to the amendment of the Senate number 5, and agree to the same with an amendment as follows:

In lieu of the matter stricken by said amendment insert:

REPORT

SEC. 603. (a) The President, after receiving information from the Director of Central Intelligence, shall submit to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives an annual report on measures to protect the identities of covert agents, and on any other matter relevant to the protection of the identities of covert agents.

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(b) The report described in subsection (a) shall be exempt from any requirement for publication or disclosure. The first such report shall be submitted no later than February 1, 1983.

And the Senate agree to the same.

Amendment numbered 20:

That the House recede from its disagreement to the amendment of the Senate numbered 20, and agree to the same with an amendment as follows:

Restore the matter stricken by said amendment, amended to read as follows:

Sec. 601. Protection of identities of certain United States undercover intelligence officers, agents, informants, and sources.

Sec. 602. Defenses and exceptions.

Sec. 603. Report.

Sec. 604. Extraterritorial jurisdiction.

Sec. 605. Providing information to Congress.

Sec. 606. Definitions.

And the Senate agree to the same.

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R. L. MAZZOLI,
WYCHE FOWLER,
LEE H. HAMILTON,
NORMAN Y. MINETA,
J. K. ROBINSON,
ROBERT MCCLORY,

Managers on the Part of the House.

STROM THURMOND,
JEREMIAH DENTON,
JOHN EAST,
JOE BIDEN,
PATRICK LEAHY,
JOHN H. CHAFEE,
DICK LUGAR,
HENRY M. JACKSON,
LLOYD BENTSEN,

Managers on the Part of the Senate.

such activities would impair or impede the foreign intelligence activities of the United States, discloses any information that identifies an individual as a covert agent to any individual not authorized to receive classified information, knowing that the information disclosed so identifies such individual and that the United States is taking affirmative measures to conceal such individual's classified intelligence relationship to the United States, shall be fined not more than \$15,000 or imprisoned not more than three years, or both.

DEFENSES AND EXCEPTIONS

SEC. 602. (a) It is a defense to a prosecution under section 601 that before the commission of the offense with which the defendant is charged, the United States had publicly acknowledged or revealed the intelligence relationship to the United States of the individual the disclosure of whose intelligence relationship to the United States is the basis for the prosecution.

(b)(1) Subject to paragraph (2), no person other than a person committing an offense under section 601 shall be subject to prosecution under such section by virtue of section 2 or 4 of title 18, United States Code, or shall be subject to prosecution for conspiracy to commit an offense under such section.

(2) Paragraph (1) shall not apply (A) in the case of a person who acted in the course of a pattern of activities intended to identify and expose covert agents and with reason to believe that such activities would impair or impede the foreign intelligence activities of the United States, or (B) in the case of a person who has authorized access to classified information.

(c) It shall not be an offense under section 601 to transmit information described in such section directly to the Select Committee on Intelligence of the Senate or the Permanent Select Committee on Intelligence of the House of Representatives.

(d) It shall not be an offense under section 601 for an individual to disclose information that solely identifies himself as a covert agent.

REPORT

SEC. 603. (a) The President, after receiving information from the Director of Central Intelligence, shall submit to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives an annual report on measures to protect the identities of covert agents, and on any other matter relevant to the protection of the identities of covert agents.

(b) The report described in subsection (a) shall be exempt from any requirement for publication or disclosure. The first such report shall be submitted no later than February 1, 1983.

EXTRA TERRITORIAL JURISDICTION

SEC. 604. There is jurisdiction over an offense under section 601 committed outside the United States if the individual committing the offense is a citizen of the United States or an alien lawfully ad-

gaged in the pernicious business of naming names as that conduct is described in the legislative history of this Act.

SECTION 603

The House bill contained section 603 which deals with procedures for establishing cover for intelligence officers and employees. This section required the President to establish procedures to ensure the protection of the identities of covert agents. Such procedures were to include provision for any federal department or agency designated by the President to assist in maintaining the secrecy of such identities.

The Senate struck section 603 by unanimous consent.

The conference report contains a substitute section 603 requiring an annual report from the President on measures to protect the identities of covert agents. The conferees expect such report to include an assessment of the adequacy of affirmative measures taken by the United States to conceal the identities of covert agents.

The conferees stress, however, as was made clear during consideration of this measure in both bodies, that nothing in this provision or any other provision of H.R. 4 or in any other statute or executive order affecting U.S. intelligence activities in any way diminishes the 20-year old Congressionally-sanctioned Executive Branch policy of maintaining the total separation of the Peace Corps from intelligence activities. The importance to the effectiveness of the Peace Corps of maintaining this policy and its essential components was spelled out in detail in the reports of the Senate Judiciary Committee and the House Permanent Select Committee on Intelligence and in the debate on this measure in both bodies, and the conferees wish to reemphasize this point and call attention to the strong views of both bodies as set forth in that legislative history.

SECTION 606(4)

Senate amendment 13 struck from the definition of "covert agent" certain former intelligence officers and certain other U.S. citizens who formerly were intelligence agents, informants, or sources of operational assistance. The conferees agreed to the Senate amendment.

In adopting the Senate amendment, the conferees note that the definition of "covert agent" and thus the scope of possible prosecution is closely tied to the concept of classified information. This connection is of utmost importance in insuring that, as it applies to those who are not undercover intelligence agency employees, the definition of covert agent does not include those private citizens who might provide information to the CIA or FBI, but whose public identification, though causing personal embarrassment, would not damage the national security.

It is to be noted that after House passage of H.R. 4 and Senate passage of S. 391, the President promulgated a new executive order on classification. The Committee of Conference understands that the changes contained therein, particularly the elimination of the concept of "identifiable" damage, the addition of the category of "confidential source," and the addition of a presumption of classifi-